

CFR  
5/16/98

FEDERAL RESERVE BANK  
OF BOSTON

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April 28, 1998

Cynthia L. Johnson, Director  
Cash Management Policy and Planning Division  
Financial Management Service  
U.S. Department of the Treasury  
Room 420  
401 14th St., S.W.  
Washington, D.C. 20227

Re: 31 CFR Part 210, Government ACH, RIN 1510-AA39

Dear Cindy:

The following are the comments of the Federal Reserve Banks concerning this notice of proposed rulemaking. Generally, we believe the proposal is clear and effective.

Section 210.2(c). The definition of agency excludes Federal Reserve Banks, but the supplementary information could imply that Reserve Banks are included in the otherwise identical definition in Part 208. As stated in the attached letter from the Reserve Banks' fiscal office to FMS, the Reserve Banks are not subject to the Debt Collection Improvement Act of 1996, although they are voluntarily complying with the substance of the mandatory EFT provisions. The recodification of Title 31 U.S.Code in 1982 did not make any substantive change in the coverage of the statute (P.L. 97-258). We agree with the proposed exclusion of Reserve Banks in the definition in Part 210, but request that this be explained in such a way as not to imply inclusion in Part 208.

Section 210.7(b). We request that you consider placing this procedural provision regarding routing numbers for agencies in the Treasury Financial Manual. We also request that agencies be asked to obtain FMS approval prior to requesting a routing number from a Reserve Bank.

Section 210.8(d) provides that the crediting of the TGA by a Reserve Bank is a full acquittance of the ODFI. Under the Reserve Banks' current uniform operating circular governing ACH items (paragraph 11.2), "If a Reserve Bank does not receive actually and finally collected funds in settlement of a credit item at or before 8:30 a.m. ET on the banking day following the settlement date, the Reserve Banks that hold the sending and receiving banks' settlement

ACH # 019

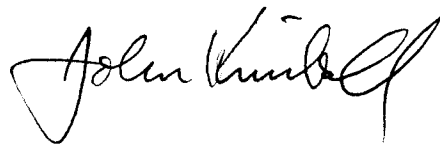
accounts may reverse the debit and credit previously made in settlement of the item by 8:30 a.m. ET, and will notify the sending and receiving banks (or a correspondent bank whose account a bank uses for settlement) as soon as possible.” The credit to the receiving bank’s account is not final until that time, because the Reserve Banks do not give immediate finality for ACH payments, unlike Fedwire payments which involve more elaborate procedures to guard against financial risk. We request that Treasury revise proposed section 210.8(d) to provide: “The final crediting .... shall constitute full acquittance....” We also question whether this should also provide for full acquittance to the originator, which is more likely to owe the obligation to the Government. See also 210.6(f).

We suggest that the term “reserve” be deleted before the word “account” in proposed sections 210.8(c)(1), 210.10(e), 210.11(c) and 210.14(b), because Reserve Banks also maintain clearing accounts for financial institutions in some cases. See definition in Part 203.2(k).

Finally, we have a question concerning section 210.4(a)(1), which applies to authorization of Federal payments. We understand that there is always a recipient of such payments, but that there may also be a beneficiary, such as when the recipient is an “authorized payment agent” or an investment account (210.5(a)). Section 210.4(a)(1) provides that the agency or RDFI that accepts the “recipient’s authorization” must verify the identity of the recipient. In a situation where there is also a beneficiary, we question whether the authorization must also be made by the beneficiary, at least in some cases, and if so whether the agency or RDFI should verify the identity of the beneficiary, notwithstanding section 210.6(f).

With respect to the request for comment on electronic data interchange, as you know the Reserve Banks are planning on implementing software on FEDLINE<sup>SM</sup> terminals to fascilitate the conversion of ACH addenda records to human readable form, as requested by FMS.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kunkel". The signature is fluid and cursive, with a large initial "J" and a stylized "K".



FEDERAL  
RESERVE BANK OF  
PHILADELPHIA

LEGAL DEPARTMENT

March 26, 1997

Mr. Russell Morris  
Commissioner  
Department of Treasury  
Financial Management Service  
401 14th Street, S.W.  
Washington, DC 20227

Dear Mr. Morris:

At the request of Brad Carden, the Treasury liaison for the Cash Fiscal Product Office ("CFPO"), I am writing this letter concerning the issue raised at the January Strategic Planning Meeting as to whether Reserve Banks are subject to the requirements of the mandatory Electronic Funds Transfer ("EFT") provisions of the Debt Collection Improvement Act of 1996 ("DCIA"). Based upon the language of the statute, it is the view of the Reserve Banks that they are not covered by these provisions.

In 1996, the FMS promulgated interim regulations regarding these mandatory EFT provisions. At a meeting in the summer of 1996, Thomas Baxter, General Counsel of the Federal Reserve Bank of New York, John Kimball, Counsel to the Retail Product Office, and Raleigh Tozer, Counsel to the Wholesale Product Office, met with the following Treasury representatives of the Financial Management Services ("FMS") who were responsible for drafting these regulations: Cynthia Johnson, Sally Phillips and Ann Wallace. The FMS representatives indicated that FMS will allow each entity to determine whether that entity is subject to the mandatory EFT provisions of the DCIA. The Reserve Bank representatives explained their view that Reserve Banks are not agencies within the meaning of the DCIA and, therefore, are not covered by mandatory EFT provisions of that statute and its accompanying regulations. (See U.S. Sprint Communications Company, Limited Partnership v. Federal Reserve Bank of Atlanta, GSA Board of Contract Appeals, #11490-P, #11492P.) The FMS representatives voiced no objection to this conclusion.

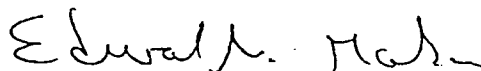
However, it is also the view of the Reserve Banks that, when a Reserve Bank acts as fiscal agent for an agency that is covered by the mandatory EFT provisions of the DCIA, then the Reserve bank will be subject to the direction of the agency with respect to making payments electronically.

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Furthermore, in order to promote efficiency in the payment's mechanism through the use of electronic forms of payment, Reserve Banks, on a voluntary basis, will adopt systems and procedures to make Reserve Bank payments, where practicable, by electronic means.

It is also the view of the Reserve Banks that they are not subject to the offset provisions of the DCIA. This view is consistent with that of the Reserve Banks that they were not subject to the debt collection provisions of Title 31 prior to its amendment by the DCIA.

Sincerely,



Edward M. Mahon  
Vice President and General Counsel

c: Michael Smokovich  
William H. Stone, Jr.  
Edward Coia  
Alice Menzano  
Brad Carden  
Thomas Baxter  
John Kimball  
Raleigh Tozer  
David Ingold, FMS